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**VETERINARIANS: Citizenship requirement for licensure**

**CONSTITUTIONAL LAW: Citizenship requirement for licensure as a veterinarian**

**The statutory requirement that an applicant for a license to practice veterinary medicine be a citizen of the United States is unconstitutional as a denial of equal protection of the laws.**

Opinion No. 4776 September 14, 1973.

Board of Veterinary Examiners
1033 South Washington Avenue
Lansing, Michigan 48926

You have requested my opinion on the following question:

> Are the citizenship requirements of The Veterinary Practice Act[1] that an applicant be either a citizen of the United States or furnish proof of having received first papers prior to naturalization as a citizen of the United States, valid and enforceable?

Section 12[2] of the statute sets forth the requirements for application, examination and licensure as a doctor of veterinary medicine in the State of Michigan. The requirements are as follows:

> "To be eligible for examination, an applicant must be . . . either a citizen of the United States or shall furnish proof or having received first papers prior to naturalization as a citizen of the United States, and shall not be addicted to the use of drugs or intoxicants, and shall be a graduate of a veterinary college approved by the board."

Section 13[3] of the statute deals with the subject of temporary permits to practice and states:

> "The board may issue temporary permits to practice the profession under any of the following conditions:
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> "* * *
>
> "(3) To foreign applicants who shall have first passed the regular examination as conducted by the board of examiners: Provided, That such temporary permit shall be valid until full citizenship shall have been attained by the licensee and who otherwise complies with the provisions of this act. Said temporary permit shall in no case be valid for a period longer than 5 years from the date of examination and may not be renewed. Upon showing of proof of final citizenship by the temporary licensee during the valid period of said temporary permit the board shall issue a license and make the required entry in the registry book."

The United States Supreme Court dealt with the citizenship-occupational problem in the case of *Truax* v *Raich*, 239 US 33, 42, 36 S Ct 7, 11, 60 L Ed 131, 135 (1915), in which it stated:

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1 1956 PA 152, as amended; MCLA 287.451 *et seq;* MSA 12.434(1) *et seq.*

2 MCLA 287.462; MSA 12.434(12).

3 MCLA 287.463; MSA 12.434(13).

> ". . . The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government. *Fong Yue Ting* v. *United States,* 149 U. S. 698, 713. The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality."

Very recently, in *In re Griffiths,* 413 US 717, 93 S Ct 2851, 2855, 37 L Ed 2d 910, (1973), the Supreme Court stated:

> "The Court has consistently emphasized that a State which adopts a suspect classification 'bears a heavy burden of justification,' *Mc-Laughlin* v. *Florida,* 379 U. S. 184, 196 (1964), a burden which, though variously formulated, requires the State to meet certain standards of proof. In order to justify the use of a suspect classification, a State must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is 'necessary to the accomplishment' of its purpose or the safeguarding of its interest.
>
> "Resident aliens, like citizens, pay taxes, support the economy, serve in the armed forces, and contribute in myriad other ways to our society. It is appropriate that a State bear a heavy burden when it deprives them of employment opportunities."

The Michigan Supreme Court on July 24, 1973 followed *In re Griffiths, supra,* in its decision in *In re Houlahan,* 389 Mich 665 (1973), in which the statutory requirement of citizenship for licensure as an attorney was declared unconstitutional.

In OAG 1971-1972, No 4755, p 111 (November 9, 1972), the attorney general concluded that the citizenship requirement under the medical practice act[4] was unconstitutional as a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States. In that opinion it was stated:

> "A legislative classification, such as one distinguishing between citizens and aliens, can be sustained only if it relates to the purpose of the act in which it is found. The purpose of the medical practice act is to protect the health and welfare of the people of this state by insuring that medical practitioners meet all the minimum requirements pertaining to education and practice. There is no rational basis for distinguishing between citizens and aliens for, if an alien applicant for licensure meets all of the requirements pertaining to education and practice contained in the medical practice act, the purpose of the

[4] 1899 PA 237, as amended; MCLA 338.51 *et seq;* MSA 14.531 *et seq.*

act is served and the people of this state are assured that the individual applicant has met the requisite standards of competence." p 112

The citizenship requirement of 1956 PA 152, *supra,* and the provision granting licensure to those aliens who have received "first papers" prior to naturalization, is a further indication that the classification distinguishing between citizens, aliens with first papers and other aliens, is equally lacking in a rational basis.

Accordingly, it is my opinion that the citizenship requirement of section 12 and the temporary license permit under section 13(3) of 1956 PA 152, *supra,* are unconstitutional as a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States. Under a familiar rule of statutory construction[5] the invalidity of these provisions will not effect the other valid provisions of the act.

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**DENTISTS: Citizenship requirement for licensure**

**CONSTITUTIONAL LAW: Citizenship requirement for licensure as a dentist**

**The statutory requirement that an applicant for a license to practice dentistry be a citizen of the United States or have declared his intention to become such, is unconstitutional as a denial of equal protection of the laws.**

Opinion No. 4785 September 14, 1973.

John R. Champagne, D.D.S., Secretary
State Board of Dentistry
1116 South Washington Avenue
Lansing, Michigan 48926

You have requested my opinion as to whether the requirement of citizenship as a prerequisite to licensure under the dental practice act[1] is constitutional and enforceable.

Section 5 of 1939 PA 122, as amended, *supra,* states that:

"No person desiring to practice dentistry shall be licensed until he shall have satisfactorily passed an examination by said board. Every applicant for examination must be a citizen of the United States, or have declared his intention of becoming such. In cases where the applicant has declared his intentions of becoming a citizen, but has not completed his qualifications for citizenship, a temporary license may be issued for the duration of the minimum time required to complete citizenship. Upon completion of the requirements for citizen-

[5] *Baldwin* v *North Shore Estates Association,* 384 Mich 42 (1970); MCLA 8.5; MSA 2.216.

[1] 1939 PA 122, as amended; MCLA 338.201 *et seq;* MSA 14.629(1) *et seq.*